

AMENDED IN SENATE MARCH 23, 2004

**SENATE BILL**

**No. 1800**

**Introduced by Senator Murray**

February 20, 2004

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~~An act to add Section 23123 to the Vehicle Code, relating to vehicles.~~  
*An act to amend Section 12810 of, and to add Section 23123 to, the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1800, as amended, Murray. Vehicles: distracting activities.

(1) Existing law prohibits driving a vehicle on the highway in willful or wanton disregard for the safety of persons or property.

This bill would ~~require a court that convicts a person of violating a provision of the Vehicle Code, or of the Penal Code, involving the safe operation of a motor vehicle on the highway to impose an additional fine of \$35 for a first offense, and an additional fine of \$150 for a second or subsequent offense occurring within 2 years of a prior conviction that was punished as specified, if the person was engaging in a distracting activity, as defined, while driving, except as specified. The bill would require the fine to be imposed in addition to any penalty prescribed for the underlying offense. By imposing the specified enhancement make it an infraction for a person to operate a vehicle in an unsafe manner that results from engaging in a distracting activity, as defined, while driving. The bill would require a first offense to be punished by a fine of \$35, and a second or subsequent offense that occurs within 2 years of a prior conviction for the infraction to be punished by a fine of \$150. By creating a new crime, the bill would establish a state-mandated local program.~~

The bill would prohibit a law enforcement officer from stopping a vehicle ~~for the sole purpose of determining whether~~ *when* a person is engaging in a distracting activity while driving, *unless the officer observes that the vehicle is being operated in an unsafe manner.*

(2) Existing law requires that any person whose driving record shows a violation point count of 4 or more points in 12 months, 6 or more points in 24 months, or 8 or more points in 36 months be prima facie presumed to be a negligent operator of a motor vehicle. In determining the point count, each conviction of specified traffic violations is given a value of either one or two points.

This bill would ~~require the underlying offense for a conviction punished with the specified enhancement to be given a point value as otherwise required under existing law, would prohibit the~~ *a first-time imposition of the enhancement violation of the specified provision* from being given a point value, and would require a 2nd or subsequent ~~imposition of the enhancement violation~~ *violation* within 2 years of a prior conviction ~~that was punished with the enhancement~~ to be given a value of one point.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12810 of the Vehicle Code is amended  
2 to read:

3 12810. In determining the violation point count, the following  
4 shall apply:

5 (a) A conviction of failure to stop in the event of an accident in  
6 violation of Section 20001 or 20002 shall be given a value of two  
7 points.

8 (b) A conviction of a violation of Section 23152 or 23153 shall  
9 be given a value of two points.

10 (c) A conviction of reckless driving shall be given a value of  
11 two points.



(d) (1) A conviction of a violation of subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) of Section 23109, subdivision (c) of Section 23109, or Section 31602 of this code, shall be given a value of two points.

(2) A conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) Except as otherwise provided, a traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(f) A traffic accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(g) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) A conviction of a violation of paragraph (1) or (2) of subdivision (b) of Section 12814.6, subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A ~~violation punished under conviction of a violation of~~ Section 23123 shall be given a point value as follows:

(A) ~~The enhancement imposed~~ *A violation punished as required* under paragraph (1) of subdivision (a) of Section 23123 shall not result in a violation point count.

(B) ~~The enhancement imposed~~ *A violation punished as required* under paragraph (2) of subdivision (a) of Section 23123 shall result in a violation point count of one point.

~~(C) The conviction for the underlying offense shall be given a point value as otherwise required under this section.~~

(4) A violation of Section 23136 shall not result in a violation point count.

(h) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

(i) A conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(j) A conviction of a violation of Section 27360 or 27360.5 shall be given a value of one point.

1 SEC. 2. Section 23123 is added to the Vehicle Code, to read:  
2 ~~23123. (a) If a person is convicted of a violation of a~~  
3 ~~provision of this code, or of the Penal Code, involving the safe~~  
4 ~~operation of a motor vehicle on the highway, and the person was~~  
5 ~~engaging in a distracting activity while driving, the court shall~~  
6 ~~impose the following fines, in addition to any penalty prescribed~~  
7 ~~for the underlying offense:~~

8 *23123. (a) A person shall not operate a vehicle in an unsafe*  
9 *manner that results from engaging in a distracting activity while*  
10 *driving. A violation of this section shall be punished as follows:*

11 (1) For a first offense ~~that is punishable under this section~~, a  
12 fine of thirty-five dollars (\$35).

13 (2) For ~~an offense that is punishable under this section and~~  
14 ~~occurred~~ *a second or subsequent offense that occurs within two*  
15 *years of a prior conviction punished under for a violation of this*  
16 *section, a fine of one hundred fifty dollars (\$150).*

17 (b) For the purposes of this section, a “distracting activity” is  
18 any of the following:

19 (1) Using or adjusting a wireless telephone, regardless of  
20 whether the telephone is specifically designed and configured to  
21 allow hands-free operation.

22 (2) Using or adjusting a personal electronic device, including,  
23 but not limited to, a personal digital assistant.

24 (3) Adjusting the controls of an audio or other entertainment  
25 device.

26 (4) Adjusting or manipulating the controls of an information  
27 system device.

28 (5) Smoking.

29 (6) Eating or drinking.

30 (7) Interacting with children, animals, passengers, or objects in  
31 the vehicle.

32 (8) Performing personal grooming or personal hygiene  
33 activities.

34 (9) Reading or writing.

35 (c) A law enforcement officer shall not stop a vehicle ~~for the~~  
36 ~~sole purpose of determining whether~~ *when* a driver is engaging in  
37 a distracting activity while driving, *unless the officer observes that*  
38 *the vehicle is being operated in an unsafe manner.*

39 (d) This section does not apply to an emergency services  
40 professional using a wireless telephone or other electronic device

1 in the course and scope of his or her duties while operating an  
2 authorized emergency vehicle or an emergency vehicle providing  
3 emergency road service or roadside assistance.

4 SEC. 3. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section 17556 of  
10 the Government Code, or changes the definition of a crime within  
11 the meaning of Section 6 of Article XIII B of the California  
12 Constitution.

